No. 1749[illegible]

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

[illegible] Yamamoto,

Appellant,

vs.

John Foster Dulles as Secretary of State,

Appellee.

APPELLEE'S BRIEF

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YUKIO YAMAMOTO,

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Appellee.

APPELLEE'S BRIEF.

Statement of Jurisdiction.

On December 21, 1951, appellant filed his Complaint which charged that he had been denied a right and privilege as a national of the United States. [Tr. of R. 4.]* On February 15, 1952, appellee filed his Answer. [Tr. of R. 7.]

The case was tried before District Judge William M. Byrne from July 17, 1956, through July 19, 1956. [Tr. of R. 9.] Judgment was rendered in favor of appellee on September 4, 1956. [Tr. of R. 19.] A timely notice of appeal was filed on October 25, 1956. [Tr. of R. 20.]

The District Court had jurisdiction of the action under Title 8, U. S. C., Section 903. This Court has jurisdiction of the appeal pursuant to the provisions of Title 28, U. S. C., Section 1291.

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*Tr. of R. refers to the Clerk's Transcript of Record. R. T. refers to the Reporter's Transcript of Proceedings.

Statement of the Case.

Appellant Yukio Yamamoto was born on June 29, 1922, at Fresno, California, of Japanese parents. [R. T. 104.] Yamamoto received a high school education in the United States and also attended a Japanese school in this country for nine years. [R. T. 104, 118.]

On May 16, 1942, appellant was evacuated along with other persons of Japanese descent, first being sent to the Fresno Assembly Center, Fresno, California. [R. T. 105.] Appellant remained at the Fresno Center until about October, 1942, at which time he was transferred to the Jerome Relocation Center at Denson, Arkansas. [R. T. 108.]

While appellant was at the Jerome Relocation Center from October, 1942, to September, 1943 [R. T. 112], the Center operated, except for the inconveniences resulting from detention, in much the same fashion as a community outside the Center. [Tr. of R. 12-13.] Community government was established. [R. T. 222.] Employment in all activities of the Center was provided for the evacuees. [R. T. 235, 243.] Medical facilities were adequate. [R. T. 249-251.] Educational [R. T. 226-234] and recreational facilities were provided. [R. T. 246-249.] Thus, the conditions existing at Jerome Relocation Center were markedly different from those existing at Tule Lake. The Jerome Relocation Center was relatively peaceful. There were few, if any, disturbances such as those which prevailed at Tule Lake. [R. T. 84, 98.]

At Jerome, 5,848 persons registered for the Army Enlistment and W.R.A. Leave-Clearance program in 1943. Of these registrants, 4,385 answered "Yes" to Question 28, which asked whether the registrant was willing to

defend the United States, willing to forswear allegiance to foreign forces or The Japanese Emperor and willing to swear unqualified allegiance to the United States. [Pltf. Ex. I, p. 199; R. T. 7.] 1,089 persons answered "No," 346 gave a qualified answer, while 28 refused to answer at all.

On March 10, 1942, appellant signed a form for the Army Enlistment Registration program at the Jerome Relocation Center entitled "Statement of United States Citizen of Japanese Ancestry." [Ex. A, R. T. 138.] In executing this form, appellant refused to answer most of the questions, which questions included No. 27, which asked whether appellant was willing to serve in the armed forces of the United States on combat duty, and No. 28, which asked whether appellant was willing to swear unqualified allegiance to the United States, to faithfully defend it from attack by foreign or domestic forces, and to forswear any form of allegiance or obedience to the Japanese Emperor. [*Ibid.*] At the end of this form, appellant inserted in his own handwriting the statement that "I wish to expatriate and repatriate to Japan." [*Ibid.*]

On March 10, 1943, appellant signed War Relocation form 126a. [Ex. B, R. T. 144.] In executing this form, appellant Yamamoto again refused to answer any questions and at the end of the form again inserted in his own handwriting that he wished to expatriate and repatriate to Japan. [*Ibid.*] One of the questions which he refused to answer was whether he was willing to take employment in any part of the United States. [*Ibid.*]

On April 29, 1943, appellant signed a form entitled "Individual Request for Expatriation." [Ex. C, R. T. 125.] In executing this form appellant indicated his desire to be repatriated to Japan. [*Ibid.*]

Appellant was given the opportunity to change his previous position and answer the questions in Exhibit A affirmatively. [R. T. 94, 153.] Appellant did not change his mind, knowing that his refusal to change his answers would result in his being transferred to Tule Lake. [R. T. 93, 153.]

After being transferred to the Tule Lake Segregation Center in September, 1943 [Ex. K, R. T. 204, 205], appellant joined and became a member of the Hokoku Seinen-dan, a militant pro-Japanese organization. [R. T. 114.] Appellant conformed to the customs of this organization and participated in its activities. He got up at 5:30 every morning to do exercises [R. T. 165], drilled and goose-stepped with the other members [R. T. 168], shaved his head and wore sweat shirts with the emblem with the rising sun upon them. [R. T. 169.]

On December 6, 1944, appellant wrote a letter to the Attorney General, expressing a desire to renounce his United States nationality, and enclosed a typewritten copy of an application form and requested advice whether it would be necessary for him to re-execute the request on a printed application form. [Ex. F, R. T. 178, 179.]

On December 28, 1944, appellant executed and submitted to the Attorney General a form entitled "Application for Permission to Renounce United States Nationality," in which he expressed a desire to renounce his United States nationality. [Ex. G, R. T. 181, 184.]

On January 10, 1945, appellant again wrote the Attorney General a letter entirely in his own handwriting, stating that he had sent in the proper application form for renunciation of United States citizenship about a month ago and asked that his name be checked and that he be called for a hearing as soon as possible. [Ex. H, R. T. 184.]

On January 19, 1945, a hearing on appellant's renunciation of citizenship was held at Tule Lake. At this hearing appellant stated, among other things, that he wanted to give up his citizenship because he had no rights here and no faith in this country; that he felt this way before he came to the camp because of the way he was treated as a Japanese; that, as a Japanese, he wanted to go back and serve his country; that he did not care for American citizenship; and that he knew what it meant to renounce his American citizenship. [Ex. I, R. T. 116, 160.]

On January 19, 1945, appellant also executed a form entitled "Renunciation of United States Nationality," formally renouncing his United States nationality in accordance with Section 401(i) of the Nationality Act of 1940, as amended. [Ex. J, R. T. 199, 200.] On May 3, 1945, this renunciation was approved as not being contrary to the interests of national defense. [*Ibid.*]

Appellant was removed from Tule Lake Segregation Center and interned at the Fort Lincoln Internment Camp at Bismark, North Dakota, on February 14, 1945. [Ex. K, R. T. 204, 205.]

On September 24, 1945, appellant executed a form entitled "Application for Repatriation" on which he applied for repatriation to Japan. [Ex. L, R. T. 122, 123.] On December 29, 1945, appellant left the United States and returned to Japan. [Ex. M, R. T. 219.] Appellant remained in Japan from some time during 1946 until some time during 1952, when he returned to the United States on a Certificate of Identity for the purpose of prosecuting this action. [Tr. of R. 3.]

ARGUMENT.

I.

Presumption of Involuntary Renunciation.

Because of the oppressive conditions prevailing at Tule Lake (see *Acheson v. Murakami,* 176 F. 2d 953 (9 Cir., 1949)), this Court has held that a rebuttable presumption of involuntary renunciation exists for those renunciants confined at Tule Lake. *McGrath v. Abo,* 186 F. 2d 766, 773 (9 Cir., 1951). When substantial evidence rebutting the presumption is introduced, the burden of proving the voluntary nature of the renunciation is upon the plaintiff. (*Ibid.*) Appellant herein contends that the Government's evidence was not sufficient to overcome the presumption.

First, appellant argues that his Tule Lake activities should be ignored because he "did nothing different than did the thousands of others who renounced and engaged in activity before the renunciation." This argument fails to take into account what this Court stated in *McGrath v. Abo, supra,* namely, that "the record shows the certainty that many of the 4,315 plaintiffs who voluntarily renounced were disloyal to the United States." Appellant does not, and cannot, point to evidence in the record which shows that his activities were solely like those of the loyal renunciants and unlike those of the disloyal. Consequently, there is more than ample justification for considering his conduct at the place of, and near in time to, his renunciation.

It is argued, however, that the effect of the *Abo* presumption is overcome only by conduct at Tule Lake which indicates that appellant himself was a "coercer." Nothing in *Abo or in Murakami v. Dulles,* 221 F. 2d 588 (9 Cir., 1955), decided after the *Abo* case, should lead one to this

conclusion. Even if such be the case, though, appellant's membership in the terroristic Hokoku Seinen-dan is the basis for a reasonable inference that he was a "coercer."

Next, appellant would also have us disregard his pre-Tule Lake activities because of the goadings of powerful agitators and the oppressiveness of imprisonment at Jerome. However, no presumption of coerced activity exists except with respect to Tule Lake. *McGrath v. Abo,* 186 F. 2d, *supra,* at p. 774. As set forth in the Statement of the Case, conditions at Jerome were entirely different than at Tule Lake. Moreover, 4,385 out of 5,848 registrants were able to express their loyalty to the United States by a "yes" answer to Question 28, and confinement of the majority did not force them to submit requests for expatriation. Thus, appellant's minority action of refusing to answer would appear to be significant. A "no" answer in *Murakami v. Dulles,* 221 F. 2d 588, 589 (9 Cir., 1955), to Question 28 apparently was the basis for sustaining a trial court's finding that it refused to believe the testimony of a renunciant, which indicates the significance of Question 28.

Appellant argues that his post-Tule Lake activities of requesting repatriation after the war and returning to Japan are not sufficient to overcome the *Abo* case. Most of appellant's contentions on this point rely upon his own testimony, which the trial court did not believe. [Tr. of R. 16.] The determination of whether the appellant was speaking the truth in 1945 or in 1956, was peculiarly within the province of the trier of fact. Appellant's return to Japan in 1945 cannot be said to be an unreasonable ground for inferring that he voluntarily renounced United States citizenship earlier in the year.

In *McGrath v. Abo,* 186 F. 2d, *supra,* at page 774, this Court stated that certain proposed evidence of the Gov-

ernment would overcome the presumption afforded Tule Lake renunciants. The offers of proof therein consisted of facts such as that renunciants had spent their formative years in Japan, had answered Question 28 in the negative, had applied for repatriation prior to renunciation, had been active members of pro-Japanese groups at Tule Lake, had voluntarily returned to Japan subsequent to renunciation, or had otherwise demonstrated that their renunciation was voluntary.

In the present case, appellant attended a Japanese school in this country for nine years [R. T. 104, 118]; applied for repatriation prior to renunciation [Ex. C, R. T. 125]; had refused to answer Question 28 [Ex. A, R. T. 138]; had been an active member of a pro-Japanese organization [R. T. 114]; and had otherwise demonstrated that his renunciation was voluntary. [Exs. B, E, F, H, I and L.]

From the foregoing documentary evidence of the Government, consisting of appellant's activities before, during and after Tule Lake, it is seen that the presumption of the *Abo* case was overcome. Appellant states that the Government must rely upon documentary evidence, evidently being critical of such evidence by reason of the circumstances under which they were executed. But documents alone need not be relied upon to rebut the presumption of involuntary coercion.

Appellant elected to testify before the Government put on its case. [R. T. 104.] Thus, appellant subjected his credibility to the scrutiny of the trial court without relying first on the presumption *Abo* afforded him. The Court disbelieved appellant's explanation of his 1943-1945 actions and made this disbelief the subject of a specific finding of fact. As was stated in *Nishikawa v. United States,* 235 F. 2d, *supra,* at page 140:

"The trier of fact need not accept the uncontradicted testimony of a witness who appears before it, and the demeanor of that witness may be such as to convince the trier that the truth lies directly opposed to the statements of the witness. [Citations.]"

It would seem that either the documentary evidence alone, according to the *Abo* case, or the incredibility of appellant alone, according to the *Nishikawa* case, would be sufficient to overcome the presumption of involuntary renunciation. Certainly both considered together must be held to overcome it.

II.
Burden of Proof.

It is contended that the trial court erroneously placed the burden of proving the involuntary nature of renunciation upon the appellant. Considerable time is devoted to arguing that *Gonzales v. Landon*, 350 U. S. 920, established a rule contrary to that announced in *McGrath v. Abo,* 186 F. 2d 766, *supra.* However, appellant admits that his identical argument was rejected in *Nishikawa v. Dulles,* 235 F. 2d 135, 141 (9 Cir., 1956). If *Nishikawa* is in point, there seems little point in our arguing the matter much further.

In *Nishikawa,* as in the present cases, the ground of expatriation was pleaded in the Complaint and was admitted in the Answer, thus being proved conclusively. [Tr. of R. 3, 8, 10.] And, as in *Nishikawa,* the ground of expatriation (here, renunciation) would seem to require no mental element, or if so, only that the act be knowingly done. In any event, the appellant admitted at the trial that he knew the meaning of his act of renunciation, *i.e.,* that his citizenship would be taken away. [R. T. 182-183, 200.]

In criminal cases, where the burden on the Government is much greater even than the "clear and convincing" evidence rule, the Government is not required to prove that confessions are voluntary, even though confessions are carefully scrutinized by the Courts.

Rhodes v. United States, 224 F. 2d 348 (5 Cir., 1955);

Hartzell v. United States, 72 F. 2d 569 (8 Cir., 1934);

Ah Fook Chang v. United States, 91 F. 2d 805 (9 Cir., 1937);

Gray v. United States, 9 F. 2d 337 (9 Cir., 1926);

Murphy v. United States, 285 Fed. 801 (7 Cir., 1923).

No greater burden should be upon the Government in a civil case; thus, proof that the act of expatriation was knowingly made should be more than sufficient to sustain the Government's burden of proof on this point.

As appellant has pointed out, however, the *Nishikawa* case is before the Supreme Court, and appellee is informed that reargument therein has been scheduled for next year. Even if that Court should decide that the burden of proving voluntary renunciation is upon the Government, appellee submits that that burden has been sustained here.

The trial court did not merely find that appellant had not sustained his burden of proving voluntary renunciation; the court went much further and made affirmative findings as follows:

> "It is not true, as alleged in plaintiff's Complaint, that plaintiff's renunciation of United States nationality was the result of coercion, fears, confusion and mistake; nor is it true, as alleged, that such renunciation was not his free and voluntary act.

"It is true that plaintiff's renunciation of United States nationality was his free and voluntary act." [Tr. of R. 16.]

Thus, the language of the findings demonstrates that the court did not merely conclude that appellant had not sustained his burden, but specifically found that the facts were contrary to his contention. All doubt as to this matter is dispelled by the court's findings that (1) it did not believe the testimony of appellant; (2) that his sympathies and loyalties lay with Japan; (3) that before, during, and after renunciation, appellant desired to be repatriated to Japan. [Tr. of R. 12, 16.]

The primary evidence of the appellant, aside from the *Abo* presumption, on the crucial question of voluntary renunciation, came from his own lips. This evidence the trial court did not believe, and it is proper for a court to conclude that the truth lies just the opposite of testimony given by witnesses a court deems untrustworthy. *Nishikawa v. United States,* 235 F. 2d, *supra,* at p. 140. In any event, the documentary evidence of the Government showing the appellant's persistent, continuous and overt expressions of disloyalty to the United States, and desire to return to Japan, coupled with the court's disbelief of the appellant's present version of his activities, constituted clear and convincing proof, if such be necessary, of the voluntary nature of his renunciation. Since such was the evidence, and since the court specifically found that the renunciation was voluntary, it is immaterial upon whom the trial court considered the burden of proof. Such an erroneous conclusion of law would be harmless error *Craig-Giles Iron Co. v. Brownlee,* 272 Fed. 74 (4 Cir., 1921), even if the doctrine of *Gonzales v. Landon, supra,* be held to apply to cases of this type.

III.
Findings of Fact.

Appellant contends that the findings of fact are not supported by sufficient evidence. The Statement of the Case sets forth the evidence upon which the Government relied at the trial, and it seems unnecessary to repeat such evidence at this point. Suffice it to say that the evidence of appellant's express and bold manifestations of disloyalty to the United States over the period February 12, 1943, through December 28, 1945, abundantly supports the findings that appellant voluntarily renounced his citizenship.

However, appellant argues, in effect, that one should not draw inferences adverse to him from such evidence, because the oppressive conditions under which appellant existed caused him to perform acts which did not reveal his true feelings. Such an argument is better made to a trier of fact; the trial court's determination of the conflicting evidence, as expressed in its findings of fact, can be set aside only if "clearly erroneous" and due regard must be given to its opportunity to judge the credibility of the witnesses.

Fed. Rules Civ. Proc., Rule 52(a);

Martin v. Be-Ge Mfg. Co. of Gilroy, 232 F. 2d 530 (9 Cir., 1956) (and cases cited therein).

Since the trial court disbelieved appellant's explanation of his disloyal actions, it would seem that the finding upon credibility is crucial. If such finding is upheld, then not only does the Government's evidence remain uncontradicted, but it is lent additional strength by the very reason of the disbelief of appellant's attempted explanation thereof. Therefore, some of the evidence especially pertinent to the finding upon credibility will be reviewed.

A. As stated previously, *Murakami v. Dulles,* 221 F. 2d 588, *supra,* apparently stands for the proposition that a pre-Tule Lake expression of refusal to serve in the United States armed forces, to swear unqualified allegiance to the United States, and to forswear allegiance to the Japanese Emperor, is sufficient evidence to support a trial court's finding that a renunciant's testimony as to involuntary renunciation was unbelievable. Here, appellant refused to state his allegiance to this country, or whether he would serve in our armed forces before being sent to Tule Lake. [Ex. A, R. T. 138.]

B. Appellant's testimony that his continuous expressions of disloyalty over the period 1943-1945 were all as a result of fear or confusion is not inherently believable. Especially is this so when the great majority at Jerome did not answer "no" to Questions 27 and 28, and did not submit requests for repatriation, as did appellant. Furthermore, the bold and insulting nature of appellant's remarks in his renunciation hearing not only indicates his true feelings, but, as well, a lack of fear of officials of the United States. If appellant was fearless enough to be so brazen with the Government having custody and control over him, it is reasonable to infer that he was not so intimidated by other evacuees as to renounce his citizenship and return to Japan.

C. Appellant testified that the reason he refused to answer questions 27 and 28 was because of listening to one speech made at Jerome by one Father Kai and one Kuratomi. [R. T. 136-138.] According to another of appellant's witnesses, Father Kai and his group, to the common knowledge and belief of the Jerome Camp, owed their allegiance and loyalty to Japan. [R. T. 87.] Since appellant presumably was aware of this common knowl-

edge, it is reasonable to infer that his adherence to a group loyal to Japan was not as a result of confusion, but of choice.

D. On an affidavit required to be submitted in connection with his passport application in 1951, appellant stated that the reason he had applied for repatriation was because of "involuntary pressure of pro-Japanese group." [Ex. D(6), R. T. 170.] If what appellant referred to was his Request for Expatriation of April 29, 1943 [Ex. C, R. T. 125], his 1951 explanation was far different than the one he advanced at the trial. At R. T. 111, appellant says he signed the expatriation form because "we weren't treated as a rightful citizen . . . and they had me all confused." At R. T. 147-148, appellant gave as his reason for executing Exhibit C, "Oh, I just followed the rest."

On the other hand, if what appellant referred to in his affidavit was his Application for Repatriation of September 24, 1945 [Ex. L, R. T. 122-123], still his 1951 claim of "involuntary pressure" was inconsistent with his reasons advanced at the trial for executing said Application. At R. T. 211, appellant testified he executed said Application for Repatriation because he thought he might never be able to return to the United States unless he did.

Thus, nowhere in the trial was there any claim of involuntary pressure by pro-Japanese groups with respect to either appellant's Request for Repatriation or Application for Expatriation.

Also on Exhibit D [7b thereof], appellant stated in 1951 that he would have changed his refusal to answer Questions 27 and 28 if an opportunity had been afforded, but his fear of the pressure groups kept him from doing it. Again, this is inconsistent with his testimony at the

trial, as he did not testify therein he had fear of any pressure group until he reached Tule Lake.

E. Appellant testified at the trial that he did not consider himself a loyal citizen of the United States at the time of his transfer to Tule Lake. [R. T. 131.] Further, appellant testified that he did not know whether he desired to remain in this country or whether he desired to go to Japan when he refused to answer Questions 27 and 28, and when he requested repatriation to Japan. [R. T. 140-141, 147.]

F. Appellant also testified that he never gave a thought throughout the war as to whether Japan or the United States would or should win. [R. T. 155, 216-218.] The war disrupted his entire life; he was confined by the United States due to the war with the country of his parents' origin; Tule Lake was enormously interested in the great battles of the war. [Ex. 3, pp. 325, 326; R. T. 8.] Thus, appellant's assertion of a lack of thought concerning the outcome is simply fantastic.

G. Appellant testified that he did not know the meaning of the words Hokoku Seinen-dan (Young Men's Organization to Serve Our Mother Country) while at Tule Lake, even though he was a member of that organization. [R. T. 158.] In support of this statement, appellant testified that he was never told by anyone the meaning of those words, and that he never saw any newspaper published by the Hokoku. [R. T. 158-159.] Appellant studied the Japanese language for nine years. [R. T. 119-121.] Consequently, one might well expect him to be aware of the name of the pressure organization which allegedly had compelled him to join by threats [Ex. D(86), R. T. 170], or at least have enough curiosity to ask someone the name of the organization which caused

him to arise at 5:30 A.M. each morning to goose-step. [R. T. 165, 168.]

H. Appellant explains his remarks to the United States officials conducting his renunciation hearing by saying he was trying to make "a good impression" upon the officials so as to obtain approval of his renunciation. [R. T. 196.] Yet appellant had no explanation of why certain admittedly truthful statements he made at the hearing were not also colored so as to create a better impression. [R. T. 161-163, 197-199.]

I. In Answer 8(e) to Exhibit D, appellant explained his membership in the Hokoku by saying he had not realized the organization was overrun by pro-Japanese elements. However, in Answer 8(b), appellant says the pressure group at Tule Lake forced him to join the Hokoku by threatening him and keeping him in constant fear. It would be more than unusual if appellant did not realize that pro-Japanese elements overran the Hokoku when his membership therein was compelled by his own fear of Hokoku threats of violence.

J. Appellant testified that he left the United States in 1945 because he feared he would be deported anyway, and if so, he never would have had a chance to return to this country. [R. T. 211.] It is strange to think that one would believe rumors saying the best way to recover one's citizenship and be in the United States is to request expatriation therefrom, and to depart to a foreign country. However, renunciants did not believe or even hear such a rumor. Appellant's Exhibit 3, "The Spoilage," at page 326, states a rumor prevalent just before the mass renunciations:

> ". . . after the war, renunciants would not be deported, but would be permitted to remain in the United States as aliens, if they so desired."

Thus, the rumors circulated in Tule Lake were directly opposed to what appellant testified influenced him.

Appellant testified that one of the reasons he renounced his citizenship was that he had heard stories going around that he was going to be deported anyway. [R. T. 176-177.] These rumors again were inconsistent with those prevalent at Tule Lake. Indeed "The Spoilage" is not authority that the majority of renunciants there renounced because they feared deportation. Instead "The Spoilage" points out that it was the fear of being relocated in the United States that caused the mass renunciation. At page 333, it is reported:

> "Two administrative decisions announced simultaneously on December 17 transformed general reluctance to accept the pressure group progam as a whole to popular support of the main Resegregationist issue—renunciation of American citizenship. The first of these decisions was the rescission by the Western Defense Command of the orders excluding Japanese Americans from the West Coast. The second was the decision by the War Relocation Authority to force resettlement by liquidating all relocation projects within a year."

Therefore, appellant's fear of deportation at the time of renunciation again is inconsistent with other evidence.

K. Appellant has stated that he joined and remained a member of the Hokoku Seinen-dan because of fear of bodily harm. [Ex. D, 8(b), 8(c); R. T. 115, 117.] Yet his Exhibit 3, "The Spoilage," shows that the Hokoku was highly selective in its membership (p. 322); that some dissenters were expelled (p. 330); and that other members voluntarily left (pp. 331-332), evidently not fearing reprisals.

At page 322, Nishimoto states the membership requirement of the Sokuji Kikoku Hoshi-dan whose name was very shortly changed to Hokoku Seinen-dan:

> ". . . Membership was limited to those who had signed the resegregation petition, who wished immediate return to Japan, who had pledged absolute loyalty to Japan, and who were willing 'to sacrifice life and property in order to serve our mother country in time of unparalleled emergency.' "

Other excerpts from "The Spoilage" also seem pertinent:

> "In spite of the proselytizing activities of the leaders and the spread of rumors favorable to their program, the Resegregationists failed to win over the bulk of the population. As noted, appreciably less than half of the young men members had yielded to their exhortations to renounce citizenship by the middle of December. Many of the other residents were irritated by the fanfare of bugles, the flag waving, the exhibitionistic performances of the young men and the constant stream of propaganda to which they were subjected. Criticisms of Resegregationist activities began to be voiced, in spite of fear of terroristic tactics.
>
> * * * * * * * *
>
> "By late 1944, only about 32 per cent of the population aged 17½ or older were listed as members of the combined Resegregationist organizations." [Ex. 3, pp. 326, 327, 328.]

In summary, it can be seen that the trial court's disbelief of appellant's testimony was supported by the evidence. In addition to the inconsistencies of appellant's evidence, it must be remembered that the trial judge had the opportunity to observe the appellant while on the witness stand. It would appear a difficult task for appellant

erroneous
o show that the trial court's finding that "plaintiff's de-
neanor while testifying was not convincing." In short,
ppellant has not, and cannot, prove that the court's dis-
elief of his testimony was clearly erroneous. This being
o, the Government's evidence of appellant's disloyal ac-
ions during 1943-1945 is not only uncontradicted, but is
ent additional weight. Therefore, the finding and con-
lusion that appellant voluntarily renounced his citizen-
hip is supported by overwhelming evidence.

Conclusion.

The evidence below clearly shows that the judgment of the trial court should be affirmed.

Respectfully submitted,

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